IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3546 OF 2006

Mrs.Jayashree D. Vaishnav & Anr. ....Petitioners
V/s.
Thane Municipal Corporation .
through its Commissioner ....Respondent

Mr.P.M. Pradhan for the Petitioners.
Mr.R.S. Apte for the Respondent.

CORAM : R.M. SAVANT, J.
DATED : 21ST MARCH, 2007.

P.C. :

1. This Petition is filed under Article 227 of the Constitution of India challenging the order dated 15.11.2005 passed in Misc. Civil Appeal No.73 of 2005 filed by the original Respondent No.1.

2. The Petitioners herein are running a hotel in the name and style of ‘Hotel Nisarga’ in Gala Nos.34 to 38 of Vedant Shopping Complex, Vartak Nagar, Thane. The Respondent is the planning authority, so far as city of Thane is concerned. The Respondent issued a notice under Section 253 of the Bombay Provincial Municipal Corporations Act, 1949 on 22.2.2004 to the Petitioners in respect of a weather shed constructed by the Petitioners adjoining the shop premises and

covering the open passage abutting the premises wherein the Petitioners are carrying on their business.

3. Aggrieved by the said notice, the Petitioners filed R.C.S. No.335 of 2004, claiming permanent injunction against the Respondent from taking action in respect of the said weather shed. The Petitioners also made an application for temporary injunction being Exhibit 5 in the said suit which application was allowed by the trial Court vide its order dated 24.6.2005. By the said order, the trial Court restrained the Respondent from demolishing the weather shed constructed by the Petitioners. Being aggrieved by the said order of the trial Court granting temporary injunction, the Respondent herein filed an Appeal being R.C.A. No.73 of 2005. The said Appeal came to be allowed by the Appellate Court vide its order dated 15.11.2005 and the order of the trial Court granting temporary injunction was substituted by the Appellate Court by issuing the following directions :-

> "3. Instead in place of the said order, following temporary relief is granted.

a) pending hearing and final disposal of the suit the plaintiffs given liberty to submit reply to notice dated 14.6.2004 issued under section 260 of B.P.M.C. Act within 15 days from today. If the reply is submitted within the prescribed period, the defendant shall consider the same and intimate its decision with brief reasons to the plaintiff. The defendant will be at liberty to consider the proposal submitted by the plaintiffs for regularization of whether shade and communicate its decision thereof to the plaintiffs.

b) For a period of 15 days from communication of either the decision on reply, if any, submitted by the plaintiffs to notice under section 260 of B.P.M.C. Act or from the date of decision of plaintiffs proposal for regularization of whether shade, whichever is earlier, the offending weather shade will not be demolished.

4. This time is given to the plaintiff to take out further proceedings, if they so desire.

4. In terms of the directions contained in the said order dated 15.11.2005, the Deputy Municipal Commissioner heard the Petitioners and passed an order dated 8.5.2006. By the said order, the Deputy Municipal Commissioner has confirmed the notice issued to the Petitioners in respect of the weather shed and has also rejected the application of the Petitioners for regularization. The Deputy Municipal Commissioner has observed in the said order that the Petitioners have no right to encroach upon the area which is meant for common user and the Petitioners having encroached upon the said area had therefore carried out unauthorised construction.

5. I have heard the learned counsel for the Petitioners as well as the learned counsel for the Respondent. Mr.Pradhan, the learned counsel for the Petitioners assails the order of the Appellate Court by contending that the trial Court had granted the said relief of temporary relief considering the material produced by the Petitioners before it. On the other hand Mr.Apte, the learned counsel for the Respondent supports the order of the Appellate Court by contending that the Appellate Court has rightly observed that action could be taken against the

Petitioners by following the due process of law.

6. I have perused the orders of the trial Court as well as of the Appellate Court. The Appellate Court in my view has rightly directed the Respondent - Planning Authority to follow due process of law which it has now done by hearing the Petitioners and passing the order dated 8.5.2006. I do not see any infirmity or illegality committed by the Appellate Court in passing the said order, it is trite that in respect of the unauthorized construction, it is always open for a planning authority to proceed against the same by following due process of law.

7. In that view of the matter, no case for interference is made out by the Petitioners under Article 227 of the Constitution of India. The Petition is therefore dismissed.

8. However, the implementation of the order dated 8.5.2006 in so far as the removal of the weather shed is concerned, is stayed for a period of four weeks from today to enable the Petitioners to take appropriate steps in that regard.

(R.M. SAVANT, J.)